House of Representatives

General Assembly

File No. 875

January Session, 2011

(Reprint of File No. 286)

House Bill No. 6284
As Amended by House
Amendment Schedule "A"

Approved by the Legislative Commissioner
June 2, 2011

AN ACT CONCERNING REVISIONS TO THE BANKING STATUTES TO REFLECT CHANGES MADE PURSUANT TO THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subdivision (69) of section 36a-2 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

(69) "Supervisory agency" means: (A) The commissioner; (B) the Federal Deposit Insurance Corporation; (C) the Resolution Trust Corporation; (D) the Office of Thrift Supervision; (E) the National Credit Union Administration; (F) the Board of Governors of the Federal Reserve System; (G) the United States Comptroller of the Currency; **[**and**]** (H) <u>the Bureau of Consumer Financial Protection; and (I)</u> any successor to any of the foregoing agencies or individuals;

Sec. 2. Subsection (c) of section 36a-170 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

(c) Any electronic transfer of funds by means of a home banking terminal authorized under this section shall be subject to the Electronic Fund Transfer Act, 15 USC Section 1693, et seq., as from time to time amended, and Regulation E, [of the Federal Reserve Board,] 12 CFR Part 205, as from time to time amended.

Sec. 3. Subdivision (15) of section 36a-485 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

(15) "Mortgage loan originator" means an individual who for compensation or gain or with the expectation of compensation or gain (A) takes a residential mortgage loan application or (B) offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include (i) an individual engaged solely as a loan processor or underwriter except as otherwise provided in subdivision (3) of subsection (b) of section 36a-486; (ii) a person who only performs real estate brokerage activities and is licensed in accordance with chapter 392, unless the person is compensated by a mortgage lender, mortgage correspondent lender, mortgage broker or other mortgage loan originator or by any agent of such mortgage lender, mortgage correspondent lender, mortgage broker or other mortgage loan originator; (iii) a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in Paragraph 53D of 11 USC 101; or (iv) any individual who solely renegotiates terms for existing mortgage loans and who does not otherwise act as a mortgage loan originator, unless the United States Department of Housing and Urban Development, the Bureau of Consumer Financial Protection or a court of competent jurisdiction determines that the S.A.F.E. Mortgage Licensing Act of 2008, 12 USC Section 5101 et seq., requires such individual to be licensed as a mortgage loan originator under state laws implementing said S.A.F.E. Mortgage Licensing Act;

Sec. 4. Subsection (c) of section 36a-486 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

(c) If the United States Department of Housing and Urban Development, the Bureau of Consumer Financial Protection or a court of competent jurisdiction determines that the S.A.F.E. Mortgage Licensing Act of 2008, 12 USC Section 5101 et seq., requires an individual described in subparagraph (B)(iv) of subdivision (15) of section 36a-485 to be licensed as a mortgage loan originator under state laws implementing said S.A.F.E. Mortgage Licensing Act, such individual may continue to act in such individual's current capacity, provided such individual files an application for a mortgage loan originator license not later than the date sixty days from the date of such determination by the United States Department of Housing and Urban Development, the Bureau of Consumer Financial Protection or a court of competent jurisdiction.

Sec. 5. Subdivision (2) of subsection (a) of section 36a-676 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

(2) "Consumer Credit Protection Act" means Title I of **[**Public Law 90-321 (82 Stat. 146)**]** the Consumer Credit Protection Act, 15 USC 1601 et seq., as from time to time amended, and includes regulations adopted by the Federal Reserve Board or the Bureau of Consumer Financial Protection pursuant to **[**that**]** said act;

Sec. 6. Section 36a-681 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

Any person who wilfully and knowingly (1) gives false or inaccurate information or fails to provide information which such person is required to disclose under the provisions of sections 36a-567, 36a-568 and 36a-675 to 36a-685, inclusive, subdivision (13) of subsection (c) of section 36a-770, and sections 36a-771, 36a-774, 36a-777 and 36a-786, or any regulation adopted thereunder, (2) uses any chart or table authorized by the Federal Reserve Board or the Bureau of Consumer Financial Protection under Section 107 of the Consumer Credit Protection Act (15 USC 1606) in such manner as to consistently understate the annual percentage rate determined under said sections or (3) otherwise fails to comply with any requirement imposed under said sections shall be fined not more than five thousand dollars or imprisoned not more than one year or both.

Sec. 7. Subsection (f) of section 36a-683 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

(f) No provision of this section, subsection (d) of section 36a-684 or section 36a-681, as amended by this act, imposing any liability shall apply to any act done or omitted in good faith in conformity with any provision of sections 36a-675 to 36a-685, inclusive, or with any rule, regulation, approval or formal interpretation thereof by the commissioner, or in conformity with the Consumer Credit Protection Act (15 USC 1601 et seq.), including any rule or regulation adopted by the Federal Reserve Board or the Bureau of Consumer Financial Protection pursuant to said act, or in conformity with any interpretation of said act by the Federal Reserve Board or the Bureau of Consumer Financial Protection or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System or the Bureau of Consumer Financial Protection duly authorized by the Federal Reserve Board or the Bureau of Consumer Financial Protection to issue such interpretations or approvals under such procedures as said board or bureau may prescribe therefor, notwithstanding that after such act or omission has occurred, such statute, rule, regulation, approval or interpretation is amended, rescinded or determined by judicial or other authority to be invalid for any reason.

Sec. 8. Subdivision (6) of subsection (j) of section 36a-683 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

(6) An obligor shall have no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the

rights of the obligor under this subsection and Section 125 of the Consumer Credit Protection Act (15 USC 1635), if the creditor provided the obligor the appropriate form of written notice published and adopted by the Federal Reserve Board <u>or the Bureau of Consumer Financial Protection</u>, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor, and otherwise complied with all other requirements of this subsection and Section 125 of the Consumer Credit Protection Act (15 USC 1635) regarding notice.

Sec. 9. Subsection (b) of section 36a-696 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

(b) Upon written request and proper identification of any consumer, a credit rating agency shall disclose to the consumer, within five business days of receipt of the consumer's request, the nature and substance of all information in its files, including (1) any credit score or predictor relating to the consumer, as required by and in a form and manner that complies with the federal Fair Credit Reporting Act and commentary adopted and enforced by the Federal Trade Commission <u>or the Bureau of Consumer Financial Protection</u>; (2) a record of all inquiries, by recipient, including the recipient's name which resulted in providing a credit report concerning the consumer during the preceding twelve-month period; (3) a clear and concise explanation of the information; and (4) a written summary of the consumer's rights under state and federal consumer credit reporting statutes in a form substantially similar to the summary in section 36a-699a. The credit rating agency may charge no more than five dollars for the first request for such information within the preceding twelve months and no more than seven dollars and fifty cents for any additional request within the same twelve-month period for such information, provided such disclosure shall be made without charge to the consumer if the request for disclosure is made not more than sixty days after notification to the consumer of an adverse action by a creditor.

Sec. 10. Subdivision (2) of section 36a-736 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

(2) "Federal Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act of 1975 (12 USC Section 2801 et seq.), as amended from time to time, and any regulations promulgated by the Federal Reserve Board or the Bureau of Consumer Financial Protection pursuant to that act, except, for purposes of sections 36a-735 to 36a-744, inclusive, the supervisory agency shall be the commissioner;

Sec. 11. Section 36b-6 of the general statutes is amended by adding subsection (l) as follows (*Effective July 21, 2011*):

(NEW) (l) The commissioner may by rule, regulation or order, conditionally or unconditionally, exempt from the requirements of this section any person or class of persons upon a finding that such exemption is in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this chapter.

Sec. 12. Subdivision (3) of subsection (a) of section 42-391 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

(3) "Federal Consumer Leasing Act" means Chapter 5 of Title I of the Consumer Credit Protection Act, 15 USC Sections 1667 to 1667f, inclusive, as amended. The term includes regulations issued by the Board of Governors of the Federal Reserve System or the Bureau of Consumer Financial Protection pursuant to that act, Regulation M, 12 CFR Part 213, as amended.

Sec. 13. Subdivision (2) of subsection (d) of section 42-427 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

(2) With respect to requirements based on the federal Consumer

Leasing Act, a rule, regulation or interpretation of said act by the Federal Reserve Board or the Bureau of Consumer Financial Protection, even if after the act or omission occurred, the rule, regulation or interpretation is amended, rescinded or determined by judicial or other authority to be invalid.

Sec. 14. Subsection (c) of section 42a-3-102 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

(c) Regulations of the Board of Governors of the Federal Reserve System or the Bureau of Consumer Financial Protection and operating circulars of the federal reserve banks supersede any inconsistent provision of this article to the extent of the inconsistency.

Sec. 15. Subsections (b) and (c) of section 42a-4-103 of the general statutes are repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

(b) Federal reserve and the Bureau of Consumer Financial Protection regulations and operating circulars, clearinghouse rules, and the like have the effect of agreements under subsection (a) of this section, whether or not specifically assented to by all parties interested in items handled.

(c) Action or nonaction approved by this article or pursuant to federal reserve or the Bureau of Consumer Financial Protection regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or nonaction consistent with clearinghouse rules and the like or with a general banking usage not disapproved by this article, is prima facie the exercise of ordinary care.

Sec. 16. Subsection (a) of section 42a-4-110 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

(a) "Agreement for electronic presentment" means an agreement, clearinghouse rule, or Federal Reserve <u>or the Bureau of Consumer Financial Protection</u> regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

Sec. 17. Section 42a-4A-107 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

Regulations of the Board of Governors of the Federal Reserve System <u>and the Bureau of Consumer Financial Protection</u> and operating circulars of the federal reserve banks supersede any inconsistent provision of this article to the extent of the inconsistency.

Sec. 18. Subsection (b) of section 46a-81f of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 21, 2011*):

(b) No liability may be imposed under this section for an act done or omitted in conformity with a regulation or declaratory ruling of the Banking Commissioner, the Federal Reserve Board<u>, the Bureau of Consumer Financial Protection</u> or any other governmental agency having jurisdiction under the Equal Credit Opportunity Act, notwithstanding that after the act or omission the regulation or declaratory ruling may be amended, repealed or determined to be invalid for any reason.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 21, 2011*	36a-2(69)
Sec. 2	*July 21, 2011*	36a-170(c)
Sec. 3	*July 21, 2011*	36a-485(15)
Sec. 4	*July 21, 2011*	36a-486(c)

Sec. 5	*July 21, 2011*	36a-676(a)(2)
Sec. 6	*July 21, 2011*	36a-681
Sec. 7	*July 21, 2011*	36a-683(f)
Sec. 8	*July 21, 2011*	36a-683(j)(6)
Sec. 9	*July 21, 2011*	36a-696(b)
Sec. 10	*July 21, 2011*	36a-736(2)
Sec. 11	*July 21, 2011*	36b-6
Sec. 12	*July 21, 2011*	42-391(a)(3)
Sec. 13	*July 21, 2011*	42-427(d)(2)
Sec. 14	*July 21, 2011*	42a-3-102(c)
Sec. 15	*July 21, 2011*	42a-4-103(b) and (c)
Sec. 16	*July 21, 2011*	42a-4-110(a)
Sec. 17	*July 21, 2011*	42a-4A-107
Sec. 18	*July 21, 2011*	46a-81f(b)

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 $	FY 13 $
Banking Dept.	BF - Revenue Gain	less than 5,000	less than 5,000

Note: BF=Banking Fund

Municipal Impact: None

Explanation

The bill results in a potential revenue gain of less than $5,000 by specifying that Connecticut's banking laws apply to business and industrial development corporation licensees. This results in such entities being subject to any penalties for violating Connecticut Banking Law. Total fines levied by the Department of Banking have averaged $1.5 million over the past three fiscal years.

House "A" (LCO 6157) was technical and resulted in no fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis
HB 6284 (as amended by House "A")*

AN ACT CONCERNING THE DEPARTMENT OF BANKING.

SUMMARY:

This bill adds references to the federal Bureau of Consumer Financial Protection to various provisions of the banking laws and Uniform Commercial Code, as well as certain other sections of the general statutes concerning consumer credit transactions. For example, it specifies that the bureau is a supervisory agency for purposes of the banking laws. The addition of these references reflects the transfer of consumer financial protection functions from several federal entities to the bureau, which is scheduled to take place on July 21, 2011 (the bill's effective date). The bureau was created as part of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (see BACKGROUND).

The bill also allows the banking commissioner to exempt any person or class of people from registration requirements and related provisions of the Uniform Securities Act, upon finding that the exemption is in the public interest and consistent with investor protection and the act.

The bill also makes technical and conforming changes.

*House Amendment "A" strikes the underlying bill, which specified that Connecticut's banking laws apply to business and industrial development corporation licensees and made a technical change, and adds the provisions described above.

EFFECTIVE DATE: July 21, 2011

REFERENCES TO BUREAU OF CONSUMER FINANCIAL PROTECTION

§ 1 — Supervisory Agency in Banking Statutes

The bill adds the bureau to the lists of entities defined as "supervisory agencies" for purposes of banking laws. The list of supervisory agencies already includes the state banking commissioner and various federal entities.

§§ 3, 4 — Mortgage Loan Originators

Current law includes within the definition of mortgage loan originator someone who only renegotiates terms for existing mortgages and does not otherwise act as an originator but whom the U.S. Department of Housing and Urban Development (HUD) or a court determines needs to be licensed under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E Act). The bill adds to this someone whom the bureau determines needs to be licensed under the S.A.F.E. Act. The bill also makes conforming changes.

§§ 5-8 — Consumer Credit Protection Act and Truth in Lending Act

The bill provides that in specified provisions of the banking law (including the Connecticut truth-in-lending act and provisions concerning finance companies and retail installment sales financing) and specified other laws regarding retail credit, unless the context otherwise requires, the federal Consumer Credit Protection Act (CCPA) includes regulations adopted by the bureau under that act. The law already specifies that for these purposes, the CCPA includes regulations adopted by the Federal Reserve under the act.

The truth-in-lending act provides criminal penalties (up to a year's imprisonment, up to a $5,000 fine, or both) for anyone who willfully and knowingly uses a chart or table authorized by the Federal Reserve under the CCPA (§ 107) in a manner that consistently understates a loan's annual percentage rate determined under specified banking laws. The bill extends the same penalties to anyone who does this using a chart or table authorized by the bureau.

The truth-in-lending act provides that specified liability provisions in the act do not apply to acts or omissions that were made in good faith in conformity with the truth-in-lending act or certain other laws or determinations, including (1) the Federal Reserve's rules or regulations adopted under the CCPA or its interpretations of the CCPA or (2) interpretations or approvals by a duly authorized Federal Reserve official or employee, notwithstanding that after the act or omission has occurred, the law, rule, regulation, approval, or interpretation is amended, rescinded, or determined by a court or other authority to be invalid. The bill adds to these provisions the bureau's rules, regulations, or interpretations, or the interpretations or approvals of its authorized officials or employees.

Under the truth-in-lending act, an obligor has no rescission rights arising solely from the form of written notice the creditor uses to inform the obligor of such rights under the act and the CCPA, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Federal Reserve, or a comparable written notice, that was properly completed by the creditor, and otherwise complied with all other requirements of this provision and the CCPA. The bill provides that an obligor similarly has no rescission rights if the creditor provided notice in the form published and adopted by the bureau and met the other requirements.

§ 9 — Credit Reports

By law, a credit rating agency must disclose to a consumer the nature and substance of all information in its files, upon the consumer's written request and proper identification. This includes any credit score or predictor relating to the consumer, as required by and in a form complying with the federal Fair Credit Reporting Act and commentary that the Federal Trade Commissioner adopts and enforces. The bill adds to this the commentary adopted and enforced by the bureau.

§ 10 — Home Mortgage Disclosure

The bill specifies that in the Connecticut home mortgage disclosure act, unless the context otherwise requires, the federal Home Mortgage Disclosure Act (HMDA) includes regulations promulgated by the bureau under that act. The law already specifies that for these purposes, the HMDA includes regulations adopted by the Federal Reserve. By law, unchanged by the bill, the commissioner is the supervisory agency for purposes of the state home mortgage disclosure act.

§§ 12, 13 — Consumer Leases

The bill specifies that in the state consumer leases act, the federal Consumer Leasing Act includes regulations issued by the bureau pursuant to the federal act. The law already refers to Federal Reserve regulations for this purpose.

Under the state consumer leases act, a lease holder is relieved from liability for statutory damages in certain circumstances. For example, a lease holder is not liable for damages concerning acts or omissions made in good faith conforming to the Federal Reserve's rules, regulations, or interpretations of the federal Consumer Leasing Act, even if after the act or omission occurred, the rule, interpretation, or approval was changed, rescinded, or held invalid by a court or other authority. The bill adds to this the bureau's rules, regulations, or interpretations of the federal act.

§§ 14-17 — Uniform Commercial Code (UCC)

Negotiable Instruments. The law provides that in the UCC's provisions concerning negotiable instruments (e.g., checks), Federal Reserve regulations and operating circulars of federal reserve banks supersede any inconsistent provision to the extent of the inconsistency. The bill provides that bureau regulations supersede any inconsistent provision in the same manner.

Bank Deposits and Collections. By law, the effect of the UCC's bank deposits and collections provisions may be varied by agreement.

The parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure. But the agreement may determine the standards by which the bank's responsibility must be measured unless those standards are manifestly unreasonable.

By law, Federal Reserve regulations and operating circulars (among other rules) have the effect of agreements provided above, even if not specifically agreed to by all parties interested in items handled. The bill specifies that bureau regulations and operating circulars have the same effect.

The bill specifies that action or nonaction pursuant to bureau regulations or operating circulars constitutes the exercise of ordinary care. The law already provides the same for action or nonaction pursuant to Federal Reserve regulations or operating procedures, among others.

The bill also changes the definition of "agreement for electronic presentment." Current law defines this to include an agreement, clearinghouse rule, or Federal Reserve regulation or operating circular, providing that an item's presentment may be made by transmitting an item's image or information describing it rather than delivering the item itself. The bill adds bureau regulations or operating circulars to this list. By law, the agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to it.

Fund Transfers. The bill specifies that bureau regulations supersede any inconsistent provision of the UCC's fund transfer provisions to the extent of the inconsistency. The law already provides the same for Federal Reserve regulations and operating circulars of the federal reserve banks.

§ 18 — Sexual Orientation Discrimination in Credit Transactions

By law, it is a discriminatory practice for any creditor to discriminate on the basis of sexual orientation or civil union status against anyone 18 years old or over in any credit transaction. But no liability may be imposed for an act done or omitted in conformity with a regulation or declaratory ruling of the banking commissioner, the Federal Reserve, or any other governmental agency having jurisdiction under the Equal Credit Opportunity Act, notwithstanding that after the act or omission the regulation or declaratory ruling may be amended, repealed, or determined to be invalid for any reason. The bill specifies that actions or omissions that conform to the bureau's regulations or declaratory rulings also preclude liability.

§ 11 — EXEMPTION FROM UNIFORM SECURITIES ACT

Under the bill, the banking commissioner can exempt any person or class of people from certain requirements of the Uniform Securities Act. To do so, he must find that the exemption is (1) in the public's interest and (2) consistent with the protection of investors and the purposes fairly intended by policy and provisions of the act. The bill specifies that the exemption may be by rule, regulation, or order, and may be conditional or unconditional.

Matters subject to the exemption include (1) registration requirements that apply to broker-dealers, agents, certain investment advisers, and investment adviser agents; (2) requirements that apply to issuers, broker-dealers, and investment advisers concerning the employment of agents; (3) requirements concerning branch offices, including registration, acquisition, and relocation of such offices; (4) required notice for broker-dealers or investment advisers who cease to transact business at a branch or main office; and (5) related matters.

BACKGROUND

Dodd-Frank Act

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act (P. L. 111-203, 124 Stat. 1376 (2010)) was signed into law on July 21, 2010. Among many other provisions, it created the Bureau of Consumer Financial Protection as a watchdog agency to oversee financial institutions and enforce compliance with consumer financial laws. The act also raised the threshold for federal regulation of investment advisers from $25 million to $100 million of assets under management, and created new categories of investment advisers who are exempt from federal registration.

Related Bills

sSB 1110 (File 252), passed by the Senate on May 11, 2011, amends the definition of mortgage loan originator referred to above.

HB 6350 (File 276), passed by the House on May 17, 2011, explicitly authorizes the attorney general to bring a civil action in a court of competent jurisdiction to enforce the provisions of the Dodd-Frank Act that the act authorizes state attorneys general to enforce. The bill also allows the attorney general to seek any relief that the Dodd-Frank Act authorizes state attorneys general to seek.

COMMITTEE ACTION

Banks Committee

Joint Favorable
Yea 17 Nay 0 (03/15/2011)